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In the Supreme Court of the United States

OCTOBER TERM, 1932

No. 683

THE UNITED STATES OF AMERICA

v.

ADA L. BURROUGHS AND JAMES CANNON, JR.

ON CERTIFICATE FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

Neither the memorandum opinion rendered by the Supreme Court of the District of Columbia in sustaining a demurrer to the indictment in this case nor the certificate of the Court of Appeals has been reported.

JURISDICTION

The certificate of the Court of Appeals was filed in this Court on February 10, 1933. Jurisdiction to answer the questions certified is conferred upon this Court by Section 239 of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS CERTIFIED

The questions certified (R. 5) are as follows:

> Question No. 1: Where on a criminal indictment a demurrer is sustained and the indictment quashed on two grounds, one involving a construction of the statute [1] and the other the interpretation of the indictment as a pleading, will an appeal lie at the instance of the United States from the trial court of the District of Columbia [2] to the Court of Appeals of the District of Columbia?

If question No. 1 be answered in the affirmative, then

> Question No. 2: May the Court of Appeals of the District of Columbia on such appeal review the ruling of the trial court based on the construction of the statute?

STATUTES INVOLVED

The pertinent statutory provisions are copied in the Appendix, *infra*, pp. 32–40.

STATEMENT

The facts stated in the certificate may be summarized as follows:

The defendants Burroughs and Cannon, hereinafter called the appellees, were indicted in the Su-

[1] The preceding part of the certificate shows (R. 4) that the statute to which reference is made is the statute upon which the indictment was founded.

[2] The court here refers, as its certificate shows (R. 1), to the Supreme Court of the District of Columbia.

preme Court of the District of Columbia under ten counts for violations of the Federal Corrupt Practices Act of February 28, 1925, c. 368, Title III, Secs. 301–318, 43 Stat. 1053, 1070–1074. (U. S. C., Title 2, c. 8, Secs. 241–256.) Appellee Burroughs, as treasurer of a political committee known as the headquarters committee anti-Smith Democrats, was charged with failing to file with the Clerk of the House of Representatives of the United States written reports of contributions alleged to have been made by one Jameson for the aforesaid political committee. Appellee Cannon was charged with aiding and abetting appellee Burroughs in failing to file such reports. The indictment further charged that the money was contributed for the purpose of influencing and attempting to influence the election of presidential and vice presidential electors in two States. (R. 1.) Four of the counts of the indictment charged that the defendants feloniously [3] failed to file the reports on the respective

[3] Each of these counts, as shown by the typical count printed at R. 1–3, charged that as treasurer of the political committee appellee Burroughs "unlawfully and feloniously did willfully" violate the provisions of the Federal Corrupt Practices Act by "unlawfully and feloniously willfully failing to file" with the Clerk of the House of Representatives between certain specified dates a statement of certain contributions made by Jameson for the committee, and that appellee Cannon "unlawfully and feloniously did willfully aid, abet, * * * and connive at the commission of the above-described offense on the part" of appellee Burroughs of "wilfully violating" the provisions of the Federal Corrupt Practices Act, and therefore was a principal in the commission of the offense.

dates specified in the statute, while four other counts charged merely that the defendants unlawfully [4] failed to file the reports in question. The two remaining counts were for conspiracy to commit the substantive offenses charged in the other counts.

The appellees demurred to the indictment upon the grounds (1) that the Federal Corrupt Practices Act was in violation of various provisions of the Constitution, and (2) that the indictment was insufficient to inform them of the nature and cause of the accusation against them, for the reason, particularly, that it failed to contain facts showing that the alleged contributions were ever received by appellee Burroughs, the treasurer of the political committee, or that appellee Burroughs, as such treasurer, ever had any knowledge of any of such alleged contributions. (R. 3.)

The trial court sustained the demurrer and filed a memorandum opinion in which it stated that it deemed it unnecessary to pass upon the constitutional question presented but based its decision on the other grounds assigned. The trial court said (R. 3–4):

> Among the latter objections [the insufficiency of the indictment] it is contended that no offense has been stated because of the

[4] These counts, according to the certificate, omitted the words "and feloniously wilfully" appearing in the counts referred to in footnote 3, charging merely that the violations of the Act were unlawfully done. (R. 3.)

failure to allege as a fact that the Jameson contributions were reported and accounted for to Burroughs, treasurer, or that she had knowledge thereof. It is insisted that such an allegation is necessary because the true meaning and intention of section 244 of the act requires the treasurer of a political committee to report only such contributions as are received directly by him and those received by others which have been duly reported and accounted for to him; and further, at all events the indictment should show that the treasurer had knowledge of indirect contributions before being chargeable with a failure to include them in the statements which he must file under the law.

In my opinion these objections are well taken. A consideration of section 244, in the light of all other related provisions of the act, leads fairly to the conclusion that the legislative intention is to require the treasurer of a political committee to report only contributions received by him and those duly reported to or accounted for to him. Certainly it was not intended to hold one criminally responsible for failure to report a contribution of which he had no knowledge. This is a proposition advanced by the Government to which I can not assent. It calls for an unreasonable and harsh construction which is neither warranted by the nature of the act, its language, nor its intent. Given such a meaning, a treasurer who had filed a statement honestly and correctly, revealing

> every contribution known to him, would nevertheless be liable to prosecution because of an inevitable omission of a contribution made for the committee to another of which he had no knowledge. No such unjust purpose can be attributed to this legislation.
>
> Nor can I accept the alternative contention that those counts which charge a wilful failure by Burroughs to report contributions made for the committee impute to her knowledge of contributions received by another. The term "wilful," as used in these counts, is merely an adoption of the word employed in section 252 to differentiate in the penalties between a purposed and intentional violation of the act and one occurring thoughtlessly or accidentally through inadvertence or mistake. The reasoning and authorities in support of these theories are, I think, based upon fundamental misconceptions.
>
> In my judgment, for the reasons mentioned, all counts of the indictment as drawn fail to allege facts essential to constitute any criminal offense. The demurrer must, therefore, be sustained as to each count. An order will be entered accordingly.

The United States noted an appeal in open court from this judgment on the day that the decision was announced. (R. 4.)

The certificate then proceeds to state the reasons which moved the Court of Appeals to certify the questions of law recited above (*supra*, p. 2), as follows (R. 4–5):

On this appeal, appellees contend that this court is without jurisdiction to review the action of the lower court on the demurrer because the appeal from the judgment of the lower court was required to be taken direct to the Supreme Court under the provisions of the criminal appeals act of 1907 (Act March 2, 1907, 34 Stat. 1246), and in support of this contention appellees point to the memorandum opinion of the trial judge to sustain their position that the judgment sustaining the demurrer to the indictment was based upon the construction of the statute upon which it was founded. On the contrary, the United States insist the action of the lower court was based upon the insufficiency of the indictment as a pleading.

If the position of either appellant or appellees could be conceded, the duty of this court on the jurisdictional question would be clear (*U. S.* v. *Stevenson,* 215 U. S. 190), but as it appears to this court that the court below proceeded upon two grounds in sustaining the demurrer, on one of which it based its decision on the construction of the statute, i. e., in construing the statute as requiring knowledge of the contribution as a necessary ingredient of the offense, and on the other of which it based its action on the invalidity of the indictment upon general principles of criminal law, i. e., in holding that to charge the offense as wilfully done was not sufficient to charge defendants with knowledge, etc., this court is in doubt whether, in such circumstances, in view of

> the provisions of the criminal appeals act, an appeal will lie to this court, and, if it will lie, whether this court on such appeal is confined solely to a determination of the correctness of the ruling of the lower court in quashing the indictment on the ground that it was insufficient as a criminal pleading; or, in other words, whether the failure of the United States to appeal directly to the Supreme Court on the construction of the statute is an abandonment of its contention that the construction of the lower court in that respect is wrong, or whether the right to appeal on that subject alone to the Supreme Court takes away from this court jurisdiction to review that question on an appeal otherwise properly taken.

SUMMARY OF ARGUMENT

The certificate in this case was quite obviously framed upon the assumption that the Criminal Appeals Act is applicable to criminal cases originating in the Supreme Court of the District of Columbia. This assumption was no doubt predicated upon the views of the court below expressed in *United States* v. *Denison,* 47 F. (2d) 433 (60 App. D. C. 71), where it was said (pp. 435–436):

> It is settled beyond question that the Supreme Court of the District of Columbia in a proceeding of this sort exercises the jurisdiction of a District Court of the United States, and as such would come within the provisions of the Criminal Code here in question.

This language had reference to the Criminal Appeals Act and to a proceeding in the Supreme Court of the District of Columbia under the National Prohibition Act, a law generally applicable throughout the United States.

We believe that the Criminal Appeals Act has no application to the Supreme Court of the District of Columbia, or to any other court of first instance within the District of Columbia. This conclusion seems to us unavoidable, because the Criminal Appeals Act does not in terms apply to the Supreme Court of the District of Columbia. Its legislative history quite clearly indicates that it was intended to have no such application. Prior to its enactment the jurisdiction of the Court of Appeals of the District of Columbia to review judgments in criminal cases at the instance of the United States had been fully defined by Congress. Its purpose was to grant the Government a right not theretofore enjoyed, and not to limit the statutory right of appeal to the Court of Appeals of the District which the Government had exercised for some years in criminal cases originating in the courts of the District of Columbia. The Government's statutory right of appeal in such cases has been exercised both before and after the enactment of the Criminal Appeals Act, and there has never been an appeal to this Court from any judgment of the Supreme Court of the District of Columbia under the Criminal Appeals Act since its enactment in 1907.

To conclude that, in extending the Government's right of appeal in cases originating in the District Courts of the United States, Congress by the enactment of the Criminal Appeals Act intended to limit the jurisdiction of the Court of Appeals of the District of Columbia in reviewing judgments in criminal cases, would have practical results which could not have been intended by Congress. Indeed, the contention that the Criminal Appeals Act has application to criminal cases arising in the Supreme Court of the District of Columbia appears to be predicated solely upon the fact that the Supreme Court of the District does exercise the jurisdiction and powers of a District Court in cases arising under Federal statutes having general application throughout the United States. But the exercise of such jurisdiction is no reason for concluding that Congress intended that the Criminal Appeals Act should be applicable in the District of Columbia, where by prior statute the whole process of appeal in criminal cases had been completely provided for.

ARGUMENT

THE CRIMINAL APPEALS ACT HAS NO APPLICATION TO CRIMINAL CASES ORIGINATING IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

The certificate in this case was quite obviously framed upon the assumption by the court below that the Criminal Appeals Act is applicable to

criminal cases within its terms originating in the Supreme Court of the District of Columbia, an assumption which reflects what was said by the same court in *United States* v. *Denison,* 47 F. (2d) 433 (60 App. D. C. 71), where, in holding that it had jurisdiction to review under Section 935 of the D. C. Code (*infra,* p. 36), a judgment sustaining a demurrer to an indictment for insufficiency of allegation, the court said (pp. 435–436):

> It is urged that an interpretation of the statute in question is here involved which can only be reviewed by the Supreme Court of the United States under section 682, title 18, U. S. Code [the Criminal Appeals Act] * * *.
>
> This relates to procedure by writ of error from a District Court of the United States to the Supreme Court. It is settled beyond question that the Supreme Court of the District of Columbia in a proceeding of this sort exercises the jurisdiction of a District Court of the United States, and as such would come within the provisions of the Criminal Code [Criminal Appeals Act] here in question. *Arnstein* v. *United States,* 54 App. D. C. 199, 296 F. 946; *Federal Trade Commission* v. *Klesner,* 274 U. S. 145, 47 S. Ct. 557, 71 L. Ed. 972; *Swift & Co.* v. *States,* 276 U. S. 311, 48 S. Ct. 311, 72 L. Ed. 587.
>
> This right to proceed by error to the Supreme Court, however, only lies where the

> validity or construction of the statute is involved. No such question here arises, since we are dealing solely with the sufficiency of the indictment to charge a crime under the statute. Besides, the validity and construction of this statute has been so often upheld by the courts as to wholly deprive a defendant of the right to proceed on either of the grounds provided. Where the construction of a statute and its validity have been adjudicated, the right to proceed by writ of error from a District Court to the Supreme Court on either of these grounds will no longer be recognized. (Brackets ours.)

There is no other statement of any court which we have been able to find which even suggests that the Criminal Appeals Act has application in cases originating in the Supreme Court, or in any other court, of the District of Columbia. In terms the Criminal Appeals Act (Appendix, pp. 39–40) provides that writs of error [now appeals][5] "may be taken by and on behalf of the United States from the district or circuit courts direct to the Supreme Court of the United States in all criminal cases" in instances specified by the statute. The statute, therefore, is not in terms applicable to cases arising in the Supreme Court of the District of Columbia.

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[5] Writs of error were abolished by the Act of January 31, 1928, c. 14, 45 Stat. 54, as amended by the Act of April 26, 1928, c. 440, 45 Stat. 466 (U. S. C. Sup. VI, Title 28, Sec. 861b).

Prior to the passage of this statute, this Court had decided that in the absence of express statutory authority no writ of error might be taken on behalf of the United States in any criminal case (*United States* v. *Sanges,* 144 U. S. 310 (decided April 4, 1892)), and on June 6, 1894, the Court of Appeals of the District of Columbia decided that there was no statutory authority for an appeal by the United States from a decision of the Supreme Court of the District of Columbia sustaining a demurrer to an indictment. *United States* v. *Ainsworth,* 3 App. D. C. 483.

Following the decision in the *Sanges case* efforts were made to secure legislation granting the Government the right to appeal from adverse decisions in criminal cases. As early as December 1, 1892, Attorney General Miller, in his Annual Report to Congress, pointed out the desirability of such legislation and referred to "the established practice in England and most of the States of the Union." (Annual Report, 1892, p. XXIV.) This recommendation was renewed from time to time by succeeding Attorneys General.[6] In the Code of Law for the District of Columbia, approved March 3, 1901 (c. 854, 31 Stat. 1189), six years before the passage of the Criminal Appeals Act, and appli-

[6]Annual Reports of Attorneys General Olney, 1893, p. XXVI; 1894, p. XXIX; Harmon, 1896, p XV; Griggs, 1899, p. 33; 1900, p. 40; Knox, 1901, p. 33; 1903, p. VI; Moody, 1905, p. 10; 1906, p. 4.

cable to all the courts in the District, it was provided in Section 935 (Code, D. C., Title 6, Sec. 355) that—

> In all criminal prosecutions the United States or the District of Columbia, as the case may be, shall have the same right of appeal that is given to the defendant, including the right to a bill of exceptions: *Provided,* That if on such appeal it shall be found that there was error in the rulings of the court during a trial, a verdict in favor of the defendant shall not be set aside.

The effect of this and other sections to which we shall refer, was to concentrate in the Court of Appeals of the District of Columbia appellate jurisdiction in all criminal prosecutions begun in the District, whether the appeal was taken by the accused, the Government of the United States, or the District of Columbia.

There are in the District of Columbia three courts having original jurisdiction of crimes and offenses against the laws of the United States, the Supreme Court of the District of Columbia, the Police Court, and the Juvenile Court. The division of jurisdiction between these courts depends not upon whether the law violated is national or local in operation, but upon the sentence which may be imposed or upon the age of the offender. Thus, the Police Court has original jurisdiction concurrent with that of the Supreme Court of the District of many crimes not capital or otherwise infamous and not

punishable by imprisonment in the penitentiary. Section 43 of the D. C. Code (Code, D. C., Title 18, Sec. 152); Section 83 of the D. C. Code (Code, D. C., Title 18, Sec. 81); Section 934 of the D. C. Code (Code, D. C., Title 6, Secs. 353, 401).

If, however, the offender is under the age of seventeen, it is provided in Section 8 of the Act of March 19, 1906, c. 960, 34 Stat. 73, 74 (Code, D. C., Title 18, Sec. 258), that the Juvenile Court of the District of Columbia "shall have original and exclusive jurisdiction of all crimes and offenses * * * hereafter committed against the United States, not capital or otherwise infamous, and not punishable by imprisonment in the penitentiary, committed within the District of Columbia, except libel, conspiracy, and violations of the Post Office and Pension Laws of the United States."

Appeals in criminal cases from the Supreme Court of the District are regulated by Section 226 of the D. C. Code (*infra*, pp. 33–34), and by Section 935 of that Code (*infra*, p. 36) giving the United States the same right of appeals that is given the defendant in a criminal prosecution. Under these sections either party may appeal as of right to the Court of Appeals from any final order or judgment. As originally enacted in the Code of 1901, these sections also permitted review of interlocutory orders by an appeal allowed within the discretion of the Court of Appeals. The Court of Appeals may also within its discretion review the judgments of the

Police Court and the Juvenile Court (Sec. 227, D. C. Code (Code, D. C., Title 18, Sec. 28); Act establishing the Juvenile Court, approved March 19, 1906, c. 960, Sec. 22, 34 Stat. 73, 77 (Code, D. C., Title 18, Sec. 30)).

Thus, before providing for Government appeals in any criminal cases originating in the District and Circuit Courts, Congress set up in the District of Columbia a complete system of appeals in criminal cases arising in all of the courts of the District having jurisdiction of such cases, and granted to the defendant and the Government alike the same right of appeal. The ultimate jurisdiction to review all such cases was vested in the Court of Appeals of the District.

This well-integrated system was in full operation prior to the enactment of the Criminal Appeals Act. There is no suggestion in the legislative history of that Act of any purpose to modify this system. On the contrary, in response to the same demand which induced Congress to provide for Government appeals in criminal cases in the District of Columbia, its purpose in enacting the Criminal Appeals Act was to extend the same reform throughout the United States, with such modifications as might seem desirable.

This being the purpose of the statute, it would be rash to presume that with the reform procedure in the District of Columbia before it, Congress, in re-

ferring to the District Courts, intended to repeal by implication a statute recently enacted authorizing appeals from the Supreme Court of the District of Columbia to the Court of Appeals of the District. The effect of such an implied repeal would be to disrupt the entire system of appeals in the District of Columbia, leaving the Court of Appeals in the position to review decisions of the Police Court and of the Juvenile Court, and the Supreme Court of the United States in the position to review, in a limited number of cases, decisions of the Supreme Court of the District of Columbia, and leaving in doubt the jurisdiction of the Court of Appeals of the District of Columbia in the case of those appeals previously within its jurisdiction and not covered by the provisions of the Criminal Appeals Act.

There is nothing in the legislative history of the Criminal Appeals Act which indicates any purpose to repeal or modify the system of appeals as provided in the Code of Law for the District of Columbia. The bill which subsequently became the Criminal Appeals Act (H. R. 15434) was introduced in the House of Representatives on February 22, 1906 (Cong. Rec., Vol. 40, Pt. 3, p. 2881, 59th Cong., 1st Sess.). As introduced, and as it passed the House, without debate, on April 17, 1906, it read (Cong. Rec., Vol. 40, Pt. 6, p. 5408):

> That in all criminal prosecutions the United States shall have the same right of

> review by writ of error that is given to the defendant, including the right to a bill of exceptions: *Provided*, That if on such writ of error it shall be found that there was error in the rulings of the court during the trial, a verdict in favor of the defendant shall not be set aside.

With immaterial differences, this bill was practically identical in language with Section 935 of the D. C. Code. The reason for this is explained in the House Report on the bill, as follows (House Report No. 2119, p. 2, 59th Cong., 1st Sess.):

> A number of the States of the Union have by statute provided for the review by an appellate court of legal questions arising in criminal cases. Even when the defendant is acquitted such an appeal is permitted by the State authorities with the proviso that if the defendant has been placed in jeopardy the verdict in his favor shall not be set aside.
>
> Section 935 of the code of the District of Columbia gives to the United States this right of appeal. The accompanying bill will extend this provision of the code of the District of Columbia to all districts in the United States.

The Senate Committee on the Judiciary reported a substitute for the House Bill, which was radically different. (See Cong. Rec., Vol. 41, Pt. 3, pp. 2752, 2757, 59th Cong., 2d Sess.; Harvard Law Review, Vol. 20, p. 219.) This substitute read as

follows (Cong. Rec., Vol. 40, Pt. 9, p. 8695; Senate Report No. 3922, 59th Cong., 1st Sess.):

> That a writ of error may be taken by and on behalf of the United States from the district or circuit courts to the Supreme Court or the circuit court of appeals, as prescribed in an act entitled "An act to establish circuit courts of appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes," approved March 3, 1891, and the acts amendatory thereof, in all criminal cases, in the following instances, to wit:
>
> From the decision or judgment quashing or setting aside an indictment;
>
> From the decision or judgment sustaining a demurrer to an indictment or any count thereof;
>
> From the decision arresting a judgment of conviction for insufficiency of the indictment;
>
> From the decision or judgment sustaining a special plea in bar, when the defendant has not been put in jeopardy.
>
> In all these instances the United States shall be entitled to a bill of exceptions as in civil cases.

It will be noted that this substitute, while granting a power of review not as broad as that contemplated by the original bill and its counterpart (Sec. 935 of the D. C. Code), was much broader in scope than the Act as finally passed. Among other things this substitute eliminated the provision of

the original bill which would have permitted the review of rulings on questions occurring during the trial even though the defendant had been acquitted. Although attention was called to the fact that there was a similar provision in Section 935 of the D. C. Code (Cong. Rec., Vol. 41, Pt. 3, p. 2750), and such a provision was incorporated in the bill at one stage of the proceedings (Cong. Rec. Vol. 40, Pt. 9, p. 9032; Vol. 41, Pt. 4, p. 3044), it was not included in the bill when finally enacted. While the substitute bill was the subject of much debate in both Houses, in the end the most radical change therein was the narrowing of the right of review of judgments sustaining demurrers, motions to quash and motions in arrest of judgment to cases where the decision was based upon the construction or invalidity of the statute upon which the indictment was founded and the granting to the Government of a direct appeal to this Court in all cases covered by the Act. We think it clearly evident that Congress did not intend by the Criminal Appeals Act to grant to the United States the same broad right of appeal in criminal cases generally which it had previously granted to the Government in such cases arising in the courts of the District of Columbia.

As late as July 3, 1926, Congress by an Act passed that day (c. 755, 44 Stat. 831; Code, D. C., Title 18, Sec. 27) abolished the right to appeal from interlocutory orders in criminal cases. While the Act

did not specifically mention the Supreme Court of of the District of Columbia, the Committee Reports show that it was aimed primarily at the practice prevailing under Sections 226 and 935 of the D. C. Code pursuant to which the Court of Appeals of the District of Columbia had jurisdiction, in its discretion, to review interlocutory orders of the Supreme Court of the District in criminal as well as civil cases. (Senate Report No. 926, 69th Cong., 1st Sess.; House Report No. 1363, 69th Cong., 1st Sess.) The Senate Report shows that the cases which Congress had in mind were "the cases growing out of the recent oil scandal." These cases arose under statutes of general application throughout the United States, and in no sense involved offenses local to the District of Columbia. Thus, the Act of Congress dealing with this situation is an emphatic legislative recognition that criminal cases arising in the Supreme Court of the District of Columbia under statutes of general application throughout the United States are reviewable in the Court of Appeals of the District under the provisions of the D. C. Code, notwithstanding the enactment of the Criminal Appeals Act, which has application to District and Circuit Courts.

Although the Criminal Appeals Act has been in effect almost twenty-six years, we have failed to find a single case which has been brought from the Supreme Court of the District to this Court under

that Act.[7] During these twenty-six years cases must have arisen in the Supreme Court of the District to which the Act would apply if it has any application to cases in that court, and the absence of any direct appeal to this Court in any such case indicates that no law officer of the Government charged with the authorization of appeals during that period was of the opinion that the Act was applicable in the District. This, moreover, appears also to have been the view of the Court of Appeals of the District until its decision in the *Denison case, supra,* in 1931 (47 F. (2d) 433). Thus, in *United States* v. *Cella,* 37 App. D. C. 423 (decided November 6, 1911), in which this Court denied a writ of certiorari (223 U. S. 728), the Court of Appeals entertained an appeal by the United States under Section 935 of the D. C. Code from a judgment of the Supreme Court of the District sustaining a demurrer to an indictment under Section 5440, R. S., for conspiracy to violate an Act of Congress prohibiting the keeping of bucket shops in the District of Columbia, where the decision was based at least upon the construction, if not the invalidity, of the Bucket Shop Act, which, under the Criminal Appeals Act, would be considered a part of the statute upon which the indictment was founded. *Cf. United States* v. *Katz,* 271 U. S. 354; *United States* v. *Foster,* 233 U. S. 515.

[7] We have had several independent examinations made of records which would undoubtedly have disclosed such cases if they existed.

Further, in *United States* v. *Evans,* 30 App. D. C. 58 (affirmed, 213 U. S. 297), decided only a few months after the passage of the Criminal Appeals Act, the Court of Appeals called attention to that Act, but assumed arguendo and apparently as too obvious to require discussion that Section 935 of the D. C. Code permitted an appeal to it by the United States in at least one of the classes of cases covered by the Criminal Appeals Act; i. e., where the court of first instance sustains a special plea in bar and the defendant has not been put in jeopardy.

We think the error of the court below in the *Denison case* and in its apparent change of view as to the applicability of the Criminal Appeals Act, lies in its reliance upon such cases as the decisions of this Court in *Federal Trade Commission* v. *Klesner,* 274 U. S. 145; *Swift & Co.* v. *United States,* 276 U. S. 311, and its own decision in *Arnstein* v. *United States,* 296 Fed. 946 (54 App. D. C. 199). Cases similar in type are *United States* v. *California Canneries,* 279 U. S. 553, and *Claiborne-Annapolis Ferry Co.* v. *United States,* 285 U. S. 382. In all of these cases it would have been impossible for the courts of the District of Columbia to have exercised jurisdiction under statutes of general application, except by observing statutory provisions in terms applicable to District Courts and Circuit Courts of Appeals of the United States, and if jurisdiction had not been sustained the laws would not have been enforced. In none of the cases cited

was there a local statute covering the specific subject matter to which the general statute referred.

In the case at bar the situation is quite different. Congress having specifically provided a system of appeals from all of the courts in the District of Columbia to the Court of Appeals of the District, it was assumed by the court below that none of these statutory provisions define its jurisdiction because a statute of general application has defined a system of appeals from the District and Circuit Courts to the Supreme Court of the United States. Quite obviously Section 935 of the D. C. Code is specific in its application to all of the courts of the District of Columbia. It provides the exclusive method of appeal by the Government in criminal cases arising in the courts of the District, and is in no sense inconsistent with the Criminal Appeals Act, which has application to cases arising in the District and Circuit Courts.

The Criminal Appeals Act could have no application to cases arising in the Police Court or Juvenile Court of the District. Yet such cases might involve the violation of statutes having general application throughout the United States. Prosecutions in these courts are by information, and not by indictment, and certain of the provisions of the Criminal Appeals Act can have no application to such prosecutions. (D. C. Code, Sec. 44 (Code, D. C., Title 18, Sec. 165); Act of March 19, 1906, c. 960, Sec. 12, 34 Stat. 73, 75 (Code D. C., Title 18,

Sec. 262).) Of course such courts are not District Courts within the meaning of the Criminal Appeals Act.

It is not entirely clear from the certificate how far the court below would extend its assumption that its jurisdiction is governed by the Criminal Appeals Act. Certainly it could not be extended to the Juvenile and Police Courts for the reasons indicated. Question remains as to whether it could be extended to cases originating in the Supreme Court of the District of Columbia under purely local statutes. Doubts are not resolved by calling the court a District Court for one purpose, and a local court for another. A great majority of the criminal cases originating in the Supreme Court of the District of Columbia involve the violation of laws which are purely local in their application. These laws are nevertheless statutes of the United States. As was said by this Court in *Metropolitan Railroad* v. *District of Columbia,* 132 U. S. 1, 9, "Crimes committed in the District are not crimes against the District, but against the United States." See also *Benson* v. *Henkel,* 198 U. S. 1, 14. They consequently fall within the letter of the Criminal Appeals Act, but are obviously not within its spirit. The primary purpose of that Act was, unquestionably, to permit review where the construction and validity of statutes of national importance were involved and not to add to the bur-

dens of this Court by requiring it to consider statutes which are only of local importance.[8]

Comparison of the scope of review granted the United States under the local statute with that granted under the Criminal Appeals Act affords further evidence, we believe, that Congress did not intend that the latter statute should apply in the District of Columbia. As heretofore stated Section 935 of the D. C. Code was passed some six years before the Criminal Appeals Act. It gave the United States the same right of appeal that had been given to a defendant in a criminal case. The right of appeal which the defendant has in a criminal case, so far as appeals from the Supreme Court of the District to the Court of Appeals are concerned, is regulated by Section 226 of the D. C. Code, which, before it was modified by the Act of July 3, 1926, *supra,* provided:

> Any party aggrieved by any final order, judgment, or decree of the supreme court of the District of Columbia, or of any justice thereof, including any final order or judgment in any case heard on appeal from a justice of the peace, may appeal therefrom to the said court of appeals, and upon such appeal the court of appeals shall review such order, judgment, or decree, and affirm,

[8] It is true that there may come within the purview of the Criminal Appeals Act statutes which have local application to places outside of the District of Columbia. See, for example, Chapter Eleven of the Criminal Code (Act of March 4, 1909, c. 321, 35 Stat. 1088, 1142-1145) punishing certain crimes therein specified "when committed within or

> reverse, or modify the same as shall be just, except as provided in the following sections. Appeals shall also be allowed to said court of appeals from all interlocutory orders of the supreme court of the District of Columbia, or by any justice thereof, whereby the possession of property is changed or affected, such as orders for the appointment of receivers, granting injunctions, dissolving writs of attachment, and the like; and also from any other interlocutory order, in the discretion of the said court of appeals, whenever it is made to appear to said court upon petition that it will be in the interest of justice to allow such appeal.

It is evident, therefore, that Section 935 gave the United States a review as of right in the Court of Appeals of any final judgment of the Supreme Court of the District in a criminal case. It also permitted the United States to apply for an appeal to the Court of Appeals from an interlocutory order of that court in such a case. Review was not in any way conditioned upon the nature of the questions presented by the appeal. Reading the statute literally, a review might be had even after a verdict of acquittal and in such case rulings oc-

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on any lands reserved or acquired for the exclusive use of the United States, and under the exclusive jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dock-yard, or other needful building." But obviously crimes of this character constitute but a fragment of the general Federal criminal jurisdiction.

curring during the trial could be reviewed provided that a verdict of acquittal be not set aside. It was provided that the United States should have the right to a bill of exceptions. The right thus conferred was in accordance with the practice in some of the States, its purpose being to secure in effect an advisory opinion for guidance in future cases. (See Senate Report No. 5650, pp. 1–6, 59th Cong., 2d Sess., on H. R. 15434, the bill which subsequently became the Criminal Appeals Act.)

In contrast to these provisions, applicable in the courts of the District of Columbia, the Criminal Appeals Act (*infra*, pp. 39–40), which does not purport either expressly or otherwise to repeal the local statute, conferred upon the Government a very limited and circumscribed right of review. Under that Act the Government may not secure a review of a judgment sustaining a demurrer, motion to quash or motion in arrest of judgment, unless the decision of the trial court is based upon the construction or invalidity of the statute upon which the indictment was founded. No provision was made for the review of interlocutory orders, and the statute expressly provides that a writ of error may not be allowed in any case where there has been a verdict in favor of the defendant.

It is true that by later legislation and by judicial decision the scope of review granted the United States by the local statute as originally enacted has been modified and limited, but it should be noted

that this occurred subsequent to the passage of the Criminal Appeals Act. Thus, by the Act of July 3, 1926, c. 755, 44 Stat. 831, *supra* (Code, D. C., Title 18, Sec. 27) the right of either party to a criminal case to apply for a review by the Court of Appeals of an interlocutory order was prohibited. And in *United States* v. *Evans,* 30 App. D. C. 58, *supra* (affirmed in 213 U. S. 297), which was decided by the Court of Appeals on June 4, 1907, three months after the passage of the Criminal Appeals Act, and which involved an appeal by the United States from the Supreme Court of the District, after verdict of acquittal, to secure a review of exceptions taken during the trial, it was held that the statute should be so read as not to permit a right of appeal in a case of that kind.

To conclude that in extending the Government's right of appeal in cases originating in the District and Circuit Courts of the United States Congress by enactment of the Criminal Appeals Act intended to limit the jurisdiction of the Court of Appeals of the District of Columbia in reviewing judgments in criminal cases would have practical results which could not have been intended by Congress. All criminal cases originating in the Police Court and in the Juvenile Court would still be reviewable in the Court of Appeals of the District under the broad provisions of the D. C. Code. All questions reviewable under the Criminal Appeals Act arising in the Supreme Court of the District would be reviewable in this Court, whereas any questions not

covered by the Criminal Appeals Act would be reviewable in the Court of Appeals of the District.

Such a system would give rise to conflicts of appellate jurisdiction between this Court and the Court of Appeals of the District which could hardly have been within the intent of Congress. Certainly there can be but one appeal from a single judgment. If this Court has jurisdiction by direct appeal to review a judgment of the Supreme Court of the District predicated upon the construction or invalidity of a statute, it would be a strange and cumbersome procedure which authorized a review of the same judgment upon other grounds in another court. And yet this result can not be avoided except by concluding that where the Criminal Appeals Act has any application, there may be no appeal to the Court of Appeals of the District. But this result would be quite as unreasonable, since it would limit review to questions within the provisions of the Criminal Appeals Act if that Act applies, and afford review in the Court of Appeals of the District on other questions if the Criminal Appeals Act does not apply.

If the Criminal Appeals Act has any application to cases arising in the Supreme Court of the District of Columbia, it must exclude the appellate jurisdiction of the Court of Appeals of the District in such cases. But there is nothing in the Criminal Appeals Act to define the cases in which it shall have application and unless it was intended to have application in all criminal cases arising in

the Supreme Court of the District, whether under local statutes or under laws of the United States of general application there is no definition of the cases to which it does apply. To conclude that Congress intended to provide for a direct appeal to this Court in all such cases would be quite unreasonable and we find nothing in the statute, or in its history, upon which to predicate such a conclusion. Indeed, the assumption of the court below seems to be based solely upon the fact that the Supreme Court of the District does exercise the jurisdiction and powers of a District Court in cases arising under Federal statutes having general application throughout the United States. But the exercise of such jurisdiction is no reason for concluding that Congress intended that the Criminal Appeals Act should be applicable in the District of Columbia.

CONCLUSION

We believe that the Court of Appeals has full jurisdiction of the Government's appeal in this case under the provisions of the D. C. Code, to pass not only upon the sufficiency of the indictment but also upon the construction of the statute. Accordingly, we believe that both questions certified should be answered in the affirmative.

Respectfully submitted.

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MARCH, 1933.

APPENDIX

The pertinent provisions of the D. C. Code are as follows:

> SEC. 43. JURISDICTION.—The said court [Police Court] shall have original jurisdiction concurrently with the supreme court of the District, except where otherwise expressly herein provided, of all crimes and offenses committed in the said District not capital or otherwise infamous and not punishable by imprisonment in the penitentiary, except libel, conspiracy, and violation of the post office and pension laws of the United States; and also of all offenses against municipal ordinances and regulations in force in the District of Columbia. The said court shall also have power to examine and commit or hold to bail, either for trial or further examination, in all cases, whether cognizable therein or in the supreme court of the District. [Code, D. C., Title 18, Sec. 152.]
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> SEC. 44. That prosecutions in the police court shall be on information by the proper prosecuting officer. * * *. [Code, D. C., Title 18, Sec. 165.]
>
> SEC. 61. JURISDICTION.—The said court [Supreme Court of the District of Columbia] shall possess the same powers and exercise the same jurisdiction as the circuit and district courts of the United States, and shall be deemed a court of the United States, and shall also have and exercise all the jurisdiction possessed and exercised by the supreme court of the District of Columbia under the Act of Congress approved March

third, eighteen hundred and sixty-three, creating that court, and at the date of the passage of this code. [Code, D. C., Title 18, Sec. 43.]

SEC. 64. The special terms of said court [Supreme Court of the District of Columbia] shall be known, respectively, as the circuit court, the equity court, the criminal court, the probate court, and the district court of the United States. [Code, D. C., Title 18, Sec. 56.]

SEC. 83. THE CRIMINAL COURT.—The trial of crimes and misdemeanors committed in the District of Columbia shall be in the supreme court of the District of Columbia holding a special term as a criminal court, except such misdemeanors as are within the jurisdiction of the police court, as to which said court shall have concurrent jurisdiction with said police court. In all trials in said special term exceptions may be taken by the accused to the rulings of the presiding justice and presented in bills of exceptions in the same manner as in the trial of civil cases. [Code, D. C., Title 18, Sec. 81.]

SEC. 84. THE DISTRICT COURT.—The said district court shall have and exercise the same powers and jurisdiction as the other district courts of the United States, and such further special jurisdiction as may from time to time be conferred by Congress, and of all proceedings instituted in exercise of the right of eminent domain. [Code, D. C., Title 18, Sec. 91.]

SEC. 226. JURISDICTION.—Any party aggrieved by any final order, judgment, or decree of the supreme court of the District of Columbia, or of any justice thereof, including any final order or judgment in any case heard on appeal from a justice of the peace, may appeal therefrom to the said

court of appeals; and upon such appeal the court of appeals shall review such order, judgment, or decree, and affirm, reverse, or modify the same as shall be just, except as provided in the following sections. Appeal shall also be allowed to said court of appeals from all interlocutory orders of the supreme court of the District of Columbia, or by any justice thereof, whereby the possession of property is changed or affected, such as orders for the appointment of receivers, granting injunctions, dissolving writs of attachment, and the like; and also from any other interlocutory order, in the discretion of the said court of appeals, whenever it is made to appear to said court upon petition that it will be in the interest of justice to allow such appeal. [Code, D. C., Title 18, Sec. 26.]

SEC. 227. APPEALS FROM POLICE COURT.—If, upon the trial of any cause in the police court, an exception be taken by or on behalf of the United States, the District of Columbia, or any defendant to any ruling or instruction of the court upon matter of law, the same shall be reduced to writing and stated in a bill of exceptions, with so much of the evidence as may be material to the question or questions raised, which said bill of exceptions shall be settled and signed by the judge within such time as may be prescribed by rules and regulations which shall be made by the Court of Appeals of the District of Columbia for the transaction of business to be brought before it under this section, and for the time and method of the entry of appeals and for giving notice of writs of error thereto from the police court of the District of Columbia; and if, upon

presentation to any justice of the court of appeals of the District of Columbia of a petition which, in the case of a defendant, shall be verified, setting forth the matter or matters so excepted to, such justice shall be of opinion that the same ought to be reviewed, he may allow a writ of error in the cause, which shall issue out of the said court of appeals, addressed to the judge of the police court, who shall forthwith send up the information filed in the cause and a transcript of the record therein, certified under the seal of said court, to said court of appeals for review and such action as the law may require, which record shall be filed in said court of appeals within such time as may be prescribed by the court of appeals, as hereinbefore provided. Any party desiring the benefit of the provisions of this section shall give notice in open court of his or its intention to apply for a writ of error upon such exceptions and thereupon proceedings therein shall be stayed for ten days: *Provided,* That the defendant seeking an appeal shall then and there enter into recognizance, with sufficient surety to be approved by the judge of the police court, conditioned that in the event of a denial of his application for a writ of error he will, within five days next after the expiration of said ten days appear in said police court and abide by and perform its judgment, and that in the event of the granting of such writ of error he will appear in said court of appeals of the District of Columbia and prosecute the writ of error and abide by and perform its judgment in the premises. Upon failure of any defendant to enter into the recognizance provided for in this section the

sentence of the police court shall stand and be executed; otherwise execution shall be stayed pending proceedings upon his application for a writ of error and until final disposition thereof by the said court of appeals. [Code D. C., Title 18, Sec. 28.]

SEC. 934. PLACE OF IMPRISONMENT.—When any person shall be sentenced to imprisonment for a term not exceeding six months the court may direct that such imprisonment shall be either in the workhouse or in the jail. When any person is sentenced for a term longer than six months and not longer than one year such imprisonment shall be in the jail, and where the sentence is imprisonment for more than one year it shall be in the penitentiary. Cumulative sentences aggregating more than one year shall be deemed one sentence for the purposes of the foregoing provision. When the punishment of an offense may be imprisonment for more than one year the prosecution shall be in the supreme court of the District. When the maximum punishment is *a fine only or* imprisonment for one year or less the prosecution may be in the police court. [Code, D. C., Title 6, Secs. 353, 401.]

SEC. 935. APPEALS BY UNITED STATES AND DISTRICT OF COLUMBIA.—In all criminal prosecutions the United States or the District of Columbia, as the case may be, shall have the same right of appeal that is given to the defendant, including the right to a bill of exceptions: *Provided,* That if on such appeal it shall be found that there was error in the rulings of the court during a trial, a verdict in favor of the defendant shall not be set aside. [Code, D. C., Title 6, Sec. 355.]

The Act of March 19, 1906, establishing the Juvenile Court (c. 960, 34 Stat. 73, 75, 77) provides:

> SEC. 8. That the juvenile court of the District of Columbia shall have original and exclusive jurisdiction of all crimes and offenses of persons under seventeen years of age hereafter committed against the United States, not capital or otherwise infamous, and not punishable by imprisonment in the penitentiary, committed within the District of Columbia, except libel, conspiracy, and violations of the post office and pension laws of the United States, and also of all offenses of persons under seventeen years of age hereafter committed against the laws, ordinances, and regulations of the District of Columbia, and shall have power to examine and commit or hold to bail all persons under seventeen years of age, either for trial or further examination, in all cases, whether cognizable therein or in the supreme court of the District of Columbia. * * * [Code, D. C., Title 18, Sec. 258.]
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> SEC. 12. That prosecutions in the juvenile court shall be on information by the corporation counsel or his assistant. * * * [Code, D. C., Title 18, Sec. 262.]
>
> SEC. 22. That all appeals from the juvenile court shall be heard and determined in the court of appeals of the District of Columbia. If, upon the trial of any cause in the juvenile court, an exception be taken by or on behalf of the United States, the District of Columbia, or any defendant, to any ruling or instruction of the court upon matter of law, the same shall be reduced to

writing and stated in a bill of exceptions, with so much of the evidence as may be material to the question or questions raised, which said bill of exceptions shall be settled and signed by the judge within such time as may be prescribed by rules and regulations which shall be made by the said court of appeals for the transaction of business to be brought before it under this section, and for the time and method for the entry of appeals and for giving notice of writs of error thereto from the said juvenile court; and if upon presentation to any justice of the said court of appeals of a petition which, in the case of a defendant, shall be verified, setting forth the matter or matters so excepted to, such justice shall be of opinion that the same ought to be reviewed, he may allow a writ of error in the cause, which shall issue out of the said court of appeals addressed to the said juvenile court, which shall forthwith send up the information filed in the cause and a transcript of the record therein, certified under the seal of his said court, to said court of appeals for review and such action as the law may require, which record shall be filed in said court of appeals within such time as may be prescribed by the court of appeals as hereinbefore provided. Any party desiring the benefit of the provisions of this section shall give notice in open court of his, her, or its intention to apply for a writ of error upon such exceptions, and thereupon proceedings therein shall be stayed for ten days: *Provided,* That the defendant seeking an appeal shall there and then enter into recognizance, with sufficient surety, to be approved by the judge of the juvenile court, conditioned that in the event of a

> denial of his application for a writ of error he will, within five days next after the expiration of said ten days, appear in said juvenile court and abide by and perform its judgment, and that in the event of the granting of such writ of error he will appear in said court of appeals and prosecute the writ of error and abide by and perform its judgment in the premises. Upon failure of any defendant to enter into the recognizance provided for in this section the sentence of the juvenile court shall stand and be executed; otherwise execution shall be stayed pending proceedings upon his or her application for a writ of error and until final disposition thereof by the said court of appeals. [Code, D. C., Title 18, Sec. 30.]

The Act of July 3, 1926, c. 755, 44 Stat. 831 (Code, D. C., Title 18, Sec. 27), provides:

> That nothing contained in any Act of Congress shall be construed to empower the Court of Appeals of the District of Columbia to allow an appeal from any interlocutory order entered in any criminal action or proceeding or to entertain any such appeal heretofore or hereafter allowed or taken.

The Criminal Appeals Act of March 2, 1907, c. 2564, 34 Stat. 1246 (U. S. C., Title 18, Sec. 682), provides:

> That a writ of error may be taken by and on behalf of the United States from the district or circuit courts direct to the Supreme Court of the United States in all criminal cases, in the following instances, to wit:
>
> From a decision or judgment quashing, setting aside, or sustaining a demurrer to, any indictment, or any count thereof, where such decision or judgment is based upon the